

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      SEPT. 28, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Boston Technology, Inc.

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Serial No. 75/025,611

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Gerald P. Joyce III of Staas, Halsey for applicant.

K. Margaret Le, Trademark Examining Attorney, Law Office  
103 (Michael Szoke, Managing Attorney).

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Before Seeherman, Walters and Bucher, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Boston Technology, Inc. has filed a trademark  
application to register the mark ACCESSWEB for "computer  
software for serving voice messages, video messages, fax  
messages and e-mail messages using hypertext mark up  
language on a global computer network and associated  
hardware namely communications data switching equipment."<sup>1</sup>

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<sup>1</sup> Serial No. 75/025,611, in International Class 9, filed November 29,  
1995, based on an allegation of a bona fide intention to use the mark  
in commerce.

The Trademark Examining Attorney has finally refused registration, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not held.<sup>2</sup> We reverse the refusal to register.

Both applicant and the Examining Attorney appear to accept as facts that, in the context of computers and the Internet, the term "Web" is a shorthand reference to the World Wide Web; that "Web access" software is a type of software that provides an interface between a user's PC and the World Wide Web<sup>3</sup>; and that applicant's software, as identified in the application and as described in the applicant's promotional material, is not "Web access" software.

The Examining Attorney contends that applicant's mark, ACCESSWEB, is merely descriptive in connection with applicant's goods as identified in the application and as

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<sup>2</sup> While an oral hearing was requested and scheduled, a notation in the file states that applicant's attorney did not appear for the hearing and, in a subsequent telephone conversation with the Board, waived applicant's right to a hearing and asked that the case proceed on the briefs.

<sup>3</sup> The Examining Attorney submitted excerpts from the LEXIS/NEXIS database of numerous articles using the phrase "web access" to refer to this type of software.

described above. She contends that the two terms comprising the mark, ACCESS and WEB, are each merely descriptive of applicant's goods and, similarly, the combined term, ACCESSWEB, is merely descriptive thereof. The Examining Attorney submitted an excerpt from *Newton's Telecom Dictionary* (7<sup>th</sup> ed.) defining "access" as "[in] data processing, access means to retrieve information from, or store data in, memory or mass storage"; and an excerpt from *The Computer Glossary* (7<sup>th</sup> ed.) indicating "Web" is synonymous with "Worldwide Web" and is defined as "an Internet service that links documents by providing hypertext links from server to server ... [and that] allows a user to jump from document to related document no matter where it is stored on the Internet."

The Examining Attorney refers to applicant's promotional literature wherein applicant states:

The AccessWEB Internet Messaging Application allows service providers to maintain their own customized messaging "pages" on the Worldwide Web (WWW). Using standard web browser software, subscribers access the network operator's Home Page through normal Internet connections, including commercial online services and Internet Service Providers (ISP's). WWW hypertext links allow subscribers to rapidly navigate to their unified mailbox.

The Examining Attorney contends that the ACCESS portion of applicant's mark merely describes the fact that

"applicant's software allows the user to go to the web and retrieve information and then store same on the home page for the subscriber's subsequent use"; and that the WEB portion of applicant's mark is merely descriptive because, as applicant's own literature advertises, it "links documents by providing hypertext links from server to server" and, thus, it is merely operating software for this web service.

Applicant describes its software as follows:

In general, the ACCESSWEB Internet Messaging Application allows a user to retrieve voice, fax and e-mail messages from a specialized page on the World Wide Web. In order to perform this task, the end users need [to] have an Internet (or Intranet) account and a Web browser, such as the Netscape Communicator. By setting the browser to a specific URL, the end user is able to view a list of personal messages. Using a Hypertext Mark Up Language (HTML) Interface, the end user merely clicks on [a] representation of his message to retrieve it. If the message is text, the text is placed on the screen for the end user to view, if the message is voice, a sound file is played over speakers attached to the user's computer.

...

The end user described above is not the prospective purchaser of the ACCESSWEB Internet Messaging Application. What is being sold is not the Web pages and access to messages to the end user, but the software and hardware to enable the purchaser of the ACCESSWEB product (such as local phone providers) to provide said services to end users.

Applicant explains, further, that its ACCESSWEB software product can be used only in connection with other products

offered by applicant, such as its ACCESS NP services platform; and that applicant has a line of products, the names of which all contain the root word ACCESS.<sup>4</sup>

Applicant contends that "the important aspect of its product is that it provides a unified presentation of messages to a user" and neither the unified term ACCESSWEB, nor the individual terms ACCESS and WEB, even remotely suggest this characteristic. Applicant argues, further, that the term ACCESS, either alone or in combination with WEB, provides only a vague and incomplete suggestion of access to something; that the mark ACCESSWEB is, at most, suggestive of the identified goods; and that the mark ACCESSWEB is not merely descriptive because it has at least two possible meanings, one of which is clearly not merely descriptive because it is inaccurate, *i.e.*, the misconception that applicant's product is Web access software.

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<sup>4</sup> Applicant contends that purchasers of its ACCESSWEB software must have previously purchased, at least, applicant's ACCESS NP platform and, therefore, ACCESSWEB is not descriptive because relevant purchasers are already familiar with the term ACCESS as indicating applicant as the source of products and services. We find this argument to be unpersuasive. First, this reasoning is circular (*i.e.*, the mere fact that applicant has other trademarks utilizing the term ACCESS does not lead us to conclude that ACCESS is not merely descriptive in connection with the goods herein). Further, applicant's argument is essentially an assertion of acquired distinctiveness, which is an issue not before us.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, contrary to applicant's contention, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

Based on applicant's description of its identified goods, both in its brief and in its promotional material, we agree with applicant that, while ACCESSWEB may be suggestive of the identified goods, it is not merely descriptive thereof. Clearly, applicant's product is not

web access software. With respect to web access software, each of the Examining Attorney's LEXIS/NEXIS excerpts uses the exact phrase "web access," with the words in this particular order. While the word "Web" describes the communications medium used in connection with applicant's software, applicant's product is not part of the class of products whose specific function is to provide access to the Web. We find that the order of these two words in the mark ACCESSWEB creates a significantly different commercial impression from the phrase "Web access," one that projects a degree of ambiguity and incongruity. Thus, we find that the Examining Attorney has not established on the record before us that the mark ACCESSWEB is merely descriptive of the identified goods.

Furthermore, we resolve in applicant's behalf any doubt that we may have and conclude that the mark should be published for opposition. *See, In re Rank Organization Ltd.*, 222 USPQ 324, 326 (TTAB 1984) and cases cited therein.

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*Decision:* The refusal under Section 2(e)(1) of the Act is reversed.

E. J. Seeherman

C. E. Walters

D. E. Bucher  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board